

NOTICE OF PUBLIC HEARING

Update Incorporation by Reference throughout R307

Incorporation by reference is a legal tool that allows an agency to adopt a rule that has been adopted by another agency and make it enforceable. The Rulemaking Act permits agencies to incorporate certain types of materials by reference, and the governor has instructed agencies to incorporate by reference where appropriate.

There are several advantages of incorporating materials by reference, including eliminating error that may be introduced when material is transcribed, encouraging consistency in the state's implementation of the external requirements, simplifying updates, and eliminating the expense of publishing material that is already publicly available elsewhere. For these reasons, several portions of the Title 40 of the Code of Federal Regulation (40 CFR) have been incorporated throughout the rules of the Air Quality Board.

One of the legal requirements to incorporate material by reference is to specify the date, issue, or version of the material being incorporated. Under state law, only the version of the underlying regulation that was incorporated by reference is applicable in Utah. The only way to make revisions to the underlying regulation applicable in Utah is to revise the date of the referenced version incorporated into Utah rules.

As the rules currently exist, each place where a portion of 40 CFR is incorporated by reference includes the date of the version of 40 CFR that is incorporated. Currently, there are more than 50 places in R307 where a portion of 40 CFR is incorporated by reference. Due to the time-consuming process to revise each rule, staff has usually not asked the Board to update the reference to the version incorporated unless there was a significant change in 40 CFR. Consequently, the date of the version of 40 CFR referenced in several rules has not been updated for many years. If the date of the version of 40 CFR is not updated regularly, regulated entities may be subject to one version of a federal regulation under R307, as well as the most current version contained in 40 CFR.

To address this, the Utah Air Quality Board is proposing to add a new subsection (R307-101-3) that will contain the date of the version of the Code of Federal Regulations (CFR) that is being incorporated. This will allow the Board to change the date in one rule instead of each specific rule, and will decrease the administrative rulemaking paperwork. However, there may be cases where an earlier version of the CFR is appropriate. In these cases, the rule will list a specific version of the CFR rather than referring to the incorporation date in R307-101-3. Individual rules will still identify the specific sections of the CFR that are included or excluded. R307-101-3 will be used solely to identify the most recent version of the CFR. The Board is updating the incorporation by reference language throughout R307, and the following rules have references to the CFR that will be modified at this time:

- R307-101. General Requirements;

- R307-115. General Conformity;
- R307-170-7. Performance Specification Audits;
- R307-221. Emission Standards: Emission Controls for Existing Municipal Solid Waste Landfills;
- R307-222. Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste;
- R307-223. Emission Standards: Existing Small Municipal Waste Combustion Units;
- R307-224. Mercury Emission Standards: Coal-Fired Electric Generating Units;
- R307-310. Salt Lake County: Trading of Emission Budgets for Transportation Conformity;
- R307-417. Permits: Acid Rain Sources;
- R307-801. Asbestos; and
- R307-840. Lead-Based Paint Accreditation, Certification and Work Practice Standards.

The Board is also proposing to move the incorporation by reference of 40 CFR Part 76 currently in R307-215 to R307-417, so that all rules that deal with the Acid Rain program are in one rule.

The Board is also proposing to incorporate by reference 40 CFR Part 75 into R307-417. Part 75 establishes the monitoring, recordkeeping, and reporting requirements for the Acid Rain Program. Although it is referenced throughout the rules; it has never officially been incorporated into the rules.

Finally, the Utah Air Quality Board is proposing an update to the definitions of Acute Hazardous Air Pollutant, Carcinogenic Hazardous Air Pollutant, and Chronic Hazardous Air Pollutant to reference the 2007 version of the American Conference of Governmental Industrial Hygienists "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices."

If requested, a public hearing will be held Wednesday, December 19, 2007 at 2:00 PM in the Main Conference Room of the DEQ Building located at 150 N 1950 West in Salt Lake City. If no request for a public hearing is received by December 14, 2007, the hearing will be cancelled. After December 14, 2007 you may go to <http://www.airquality.utah.gov/Public-Interest/Public-Commen-Hearings/Pubrule.htm> or call 801-536-4136 to determine if the public hearing has been cancelled. A Request for a public hearing may be submitted by electronic mail to mcarlile@utah.gov or by calling 536-4136. In compliance with the American with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Brooke Baker, Office of Human Resources at (801) 536-4412 (TDD 536-4414).

The comment period closes at 5:00 p.m. on December 31, 2007. Comments postmarked on or before that date will be accepted. Comments may be submitted by electronic mail to mcarlile@utah.gov or may be mailed to:

M. Cheryl Heying, Director
ATTN: Update of Incorporate by Reference throughout R307
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